IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 184 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKBARKHAN ABBASKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 184 of 2003

MS SHAHEEN QURESHI WITH

MR PRITESH L PARIKH for Petitioner No. 1

MS NANDINI JOSHI, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/05/2003

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Shaheen Qureshi for Mr. Pritesh L.Parikh for the petitioner and ld. AGP Ms. Nandini Joshi for the State.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order of externment dated 28.10.2002 passed against the petitioner by the Deputy Police Commissioner, Zone-2, Ahmedabad city respondent No.2 herein in exercise of the powers conferred on him by Section 56(B) of The Bombay Police Act (hereinafter referred to as the "B.P. Act") as well as order dated 7.1.2003 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar- respondent no.3 herein confirming the order of externment passed by respondent no.2 herein.

3. Undisputedly, the proceedings under Section 56 R/w Section 59 of the B.P.Act were initiated against the present petitioner. The petitioner has challenged the legality and validity of the orders on number of grounds. However, ld. counsel Ms. Shaheen Quresh appearing for ld. counsel Mr. Parikh for the petitioner has concentrated and restricted her arguments mainly on one ground keeping her right reserved to agitate other grounds if required, that the notice served to the petitioner under Section 59 of the B.P.Act is materially vague and such vague notice has seriously prejudiced the right of the petitioner to make effective representation. I have carefully considered the notice placed at Annex.A page-8 wherein it is mentioned that externing authority has considered the fact of registration of five criminal offences at Khadia Police Station. However, notice does not disclose any details of the so-called offences. Even nature of prosecution is not mentioned in the notice as to whether alleged offences are punishable under Bombay Prohibition Act, Bombay Police Act or under Indian Penal Code or under any other law.

4. As per the settled legal proposition, the order of externment cannot sustain if the notice issued is found defective or otherwise vague. In this case, I am satisfied that the notice issued under section 59 of the B.P.Act is defective and vague. So, on this ground alone, the order of externment requires to be quashed and set aside. It is pertinent to note that it was open for the externing authority, if the activities of the present petitioner is found prejudicial, to extern the petitioner from Ahmedabad district in view of the limited area of operation. However, the present petitioner has been externed from five districts without recording any cogent

or convincing reasons. So, impugned order of externment requires to be quashed and set aside. Consequently, the order of confirmation dated 7.1.2003 passed by respondent no.3 also requires to be quashed and set aside.

5. For the reasons aforesaid, this petition is hereby allowed. Impugned order of externment dated 28.10.2002 passed by Deputy Police Commissioner, Zone-2, Ahmedabad city -respondent No.2 passed against the petitioner is hereby quashed and set aside. Consequently, the order dated 7.1.2003 passed by Deputy Secretary, Home Department, Sachivalaya, Gandhiagar respondent no.3 confirming the order of externment dated 28.10.2002 is also hereby quashed and set aside. Rule is made absolute. Direct Service is permitted.

9.5.2002 [C.K. BUCH, J]
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